IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 408 of 1997

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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UKKAD @ UKABHAI BUDHIYABHA HALPATI - Appellant(s)
Versus
STATE OF GUJARAT - Opponent(s)

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Appearance :
MR DIVYESH JOSHI for MR JB PARDIWALA for Appellant(s) : 1,
MS HB POONANI PUBLIC PROSECUTOR for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 05/12/2007

ORAL JUDGMENT

1.0 This appeal arise out of the judgment and order dated 22nd April, 1997 passed by the

learned Additional Session Judge, Navsari in Sessions Case No.142 of 1995.

2.0 The appellant-original accused and three others were charged with offence punishable under Section 302 of the Indian Penal Code. The learned Additional Sessions Judge acquitted rest of the accused. He, however, convicted the present appellant for the offence punishable under Section 304(Part-II)of the Indian Penal Code. He was sentenced to undergo rigorous imprisonment of five years and to pay fine of Rs.1,000/-. It is this conviction which the appellant has challenged in the present appeal.

3.0 From charge framed at Exhibit-2 against the accused it appears that the prosecution case is that on about 9:30 at night on 27th July, 1995 while the other accused persons caught hold of the deceased-Kikabhai, accused Ukkadbhai(the appellant, herein) gave one blow on the head of the deceased with a stick.

4.0 P.W.-1-Ramanbhai Kikabhai was examined at Exhibit-19. He is son of the deceased. He had given the complaint before the police. In his deposition, he has stated that on the date of the incident there was quarrel between his brother Jinabhai and the accused persons and at that time Naginbhai Chhanabhai Halpati and Dineshbhai Ukkadbhai Halpati caught hold of his father and the appellant-Ukkadbhai gave one stick blow on his head. His father fell down on the ground. After putting him on the side, he went to call his father's employer and also the doctor. The doctor advised them to take the patient to Navsari Civil Hospital. Upon taking his father to Civil Hospital, Navsari, it was told that he will have to be shifted to Surat. On the way to Surat his father expired at about 12:00 clock at night. Upon reaching Surat, they informed police about the incident and gave his complaint.

4.1 In his cross-examination, he has stated

that at the time of the incident about fifty persons had gathered. He agreed that other than the appellant no other accused was carrying any weapon.

5.0 P.W.-2-Jinabhai Kikabhai is the other son of the deceased-Kikabhai. His deposition was recorded at Exhibit-21. He sated that since five to six years before the incident they did not have good relations with the appellant. On the date of the incident the appellant gave stick blow to his father on the head. The blow was given with the bamboo stick.

5.1 In his cross-examination he denied that when his father was attacked he was having dinner in the house.

6.0 P.W.-4-Dr. Dineshbhai Nathubhai Patel, was examined at Exhibit-24. He was the doctor who was first called to treat the deceased. He stated that the deceased was unconscious. He had

received head injury. He therefore advised that patient should be shifted to the Civil Hospital immediately.

6.1 In his criss-examination, he further stated that since the condition of the injured person was serious, he had not examined any other injury.

7.0 P.W.-6-Harendrasinh Kiritsinh Rana examined at Exhibit-26 was the I.O., who had carried out the investigation.

8.0 P.W.-7-Dr. Kiranbhai Ratilal Pensurya examined at Exhibit-28 was the doctor who had carried out postmortem of the body of the deceased. In his deposition, he has stated that the body carried following external injuries,

(1) A swelling of 5 c.m. X 3 c.m. on the eyebrow of the left eye,

(2) A 7 c.m. long stitched wound on the skull.

8.1 He opined that the above injuries were ante-mortem.

8.2 Regarding internal injuries, he stated that upon opening the stitches he found that there was blood clotting on the parietal region and occipital regions. There was depression of 26 c.m. X 4 c.m.. There was diffused fracture around the wound which had traveled from left frontal and left parietal as well as vertex and reached right up to right parietal and right temporal parietal. Upon opening the fracture, he found that the injury had spread up to interior cranial region.

8.3 He opined that the injuries could be caused by a blunt hard substance. He opined that the injuries were sufficient in ordinary course of nature to cause death.

9.0 Having heard learned Advocates appearing for the appellant and having perused the evidence on record, it would appear that there are clear eye-witness accounts regarding the appellant, herein, giving one stick blow on the head of the deceased. P.W.-1-Ramanbhai Kikabhai, in his deposition Exhibit-19 has given version which is also supported by P.W.-2-Jinabhai Kikabhai in his deposition Exhibit-21. The witness also narrated the background leading to the quarrel. Though there are minor contradictions, there is nothing on the record to suggest that their version regarding giving stick blow to the deceased is not believable. Only because these witnesses are sons of the deceased, it would not be possible to discard their testimony.

10.0 The version of the eye-witnesses is corroborated by the other contemporaneous evidence. Dr. Dineshbhai Nathubhai Patel-P.W.-4 was called to treat the injured. He reached the

spot at about 10:00 clock at night. He had advised relatives to shift the injured to the Civil Hospital since his condition was serious. It is true that this witness in his cross-examination has stated that the persons present there did not give him the details of assailants; his testimony regarding the deceased-Kikabhai having received injury shortly before the 10:00 clock at night, however, cannot be discarded.

11.0 Dr. Kiranbhai Ratilal Pensurya-P.W.-7 who carried out postmortem of the dead body had noticed injuries corresponding to stick blow on the head. He had opined that such injuries could have been caused by hard blunt substance.

12.0 From the evidence on record, I do not find that the learned trial Judge committed any error in holding that the appellant, herein, had given the stick blow to the deceased-Kikabhai which resulted into his death.

13.0 The learned trial Judge convicted the appellant for offence punishable under Section 304(Part-II)of the Indian Penal Code. Looking to the nature of injuries, the conclusion of the trial Court cannot be found fault with. Though one stick blow was given, the same must have been given with considerable force. The deposition of Dr. Kiranbhai Ratilal Pensurya-P.W.-7 would suggest that the blow had caused serious damage to the skull of the deceased. The nature of injuries I have already noticed. Suffice to say, that the injuries were serious in nature and would have been caused by a blow given with considerable force.

14.0 Fact, however, remains that admittedly appellant gave only one stick blow. There was sudden quarrel between the two groups. In a sudden heat of the moment, the appellant gave a blow which resulted into death of Kikabhai. Learned Advocate for the appellant submitted that, the appellant is aged about fifty years

presently and has already undergone imprisonment for a period of about two and a half years. More than, ten years have passed since the date of incident.

15.0 Learned Sessions Judge sentenced the appellant to undergo rigorous imprisonment for a period of five years. In the facts of the case and considering the background noted above and nature of the involvement of the appellant, I find that the sentence is required to be reduced. Under the circumstances, the sentence is reduced to three years. Direction for payment of fine remains unaltered.

16.0 In the result, the appeal is partly allowed and it is ordered as under,

(i) conviction of the appellant is maintained,

(ii)his sentence is reduced to **THREE YEARS** rigorous imprisonment,

(iii)direction for payment of fine remains

unaltered.

16.1 Appeal disposed of accordingly. Bail stands canceled. However, appellant shall have time up to **15th January, 2008** to surrender before the Authorities.

(AKIL KURESHI,J.)

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